IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18013 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAJIDBHAI @ ARJUN @ NANJI MOHD. KHAN BELIM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 18013 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

Ms. Mita Panchal, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 21/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 14.11.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that one prohibition offence was registered with Prohibition police station, Eastern division C.R. No.1604/2004 dated 11.11.2003. It was also alleged that two witnesses have rendered statements against the petitioner. Their names were not disclosed to the petitioner. That on the strength of the registered offence and unregistered cases, the petitioner was found to be a bootlegger and with a view to prevent the petitioner from carrying on his bootlegging activities, he was ordered to be dealt with by the impugned order of detention. The petitioner has preferred this petition in order to challenge the order of detention on various grounds. It has been contended that registration of a solitary prohibition offence against the petitioner would not lead to a threat to public order or public health. That the statements of witnesses were considered by the detaining authority but the names of the witnesses were not disclosed to the petitioner without properly exercising the power of privilege under section 9(2) of the Act. That therefore, the order of detention is illegal and deserves to be quashed and set aside.

3. On receiving the petition, rule was issued and in response to the notice of rule, Ms. Mita Panchal, learned AGP appears on behalf of the respondents. An affidavit filed by the detaining authority produced by the learned AGP is taken on record.

4. At the final hearing, the learned Advocate for the petitioner has argued that a solitary prohibition offence has been registered against the petitioner and registration of the said solitary offence would lead to a threat to public order or public health. It can be gathered that the aforesaid offence was registered against the petitioner on 11.11.2003 and the impugned order of detention has been passed on 14.11.2003. It would be difficult to accept that simply because the prohibition offence was registered against the petitioner, the petitioner could be treated to be bootlegger, habitual in committing the said offence and it would be necessary to prevent the petitioner from carrying on his said illegal activities by passing the

order of detention. Therefore, it would be difficult to sustain the order of detention in the eye of law on registration of solitary prohibition offence against the petitioner. With respect to the statements of two witnesses, it can be said that the records do not show that the detaining authority had examined and verified the statement of witnesses in order to come to a finding that the witnesses had fear or apprehension in their minds about him. Such an enquiry does not appear to be entered into by the detaining authority. Therefore, without having such materials before the detaining authority, names of the witnesses could not have been withheld by exercise of power of privilege under section 9(2) of the Act. In other words, the power of privilege under section 9(2) of the Act has not been properly exercised as required by this Court (Coram: Hon'ble Mr Justice A L Dave) in a decision in Special Civil Application No.294/2000 dated 19.4.2000.

5. So on the strength of mere registration of solitary offence, it cannot be said that the petitioner's activities would lead to a threat to public order or public threat. On the other hand, power of privilege was not properly exercised under section 9(2) of the Act. Therefore, non-disclosure of names of the witnesses would be fatal to detention order as the petitioner would be deprived of exercise of his valuable right guaranteed under Article 22(5) of the Constitution of making effective representation against the petitioner. Therefore, the further continuance of the detention of the petitioner cannot be sustained in the eye of law. So on both the grounds, this petition is required to be allowed and impugned order is required to be quashed and set aside.

6. For the foregoing reasons, this petition is allowed. The impugned order dated 14.11.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp